

House Study Bill 531 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON COWNIE)

A BILL FOR

1 An Act relating to shortening the periods of time for redeeming
2 real property from foreclosure and delaying sale of
3 foreclosed property.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 535.8, subsection 4, paragraph e,
2 subparagraph (1), Code 2018, is amended to read as follows:

3 (1) Notwithstanding [section 628.3](#) when a foreclosure of a
4 mortgage on real property results from the enforcement of a
5 due-on-sale clause, the mortgagor may redeem the real property
6 at any time within ~~three years~~ eighteen months from the day of
7 sale under the levy, and the mortgagor shall, in the meantime,
8 be entitled to the possession thereof; and for the first
9 ~~thirty~~ fifteen months thereafter such right of redemption is
10 exclusive. Any real property redeemed by the debtor shall
11 thereafter be free and clear from any liability for any unpaid
12 portion of the judgment under which the real property was
13 sold. The right of redemption established by this paragraph
14 is not subject to waiver by the mortgagor and the period of
15 redemption established by this paragraph shall not be reduced.
16 The times for redemption by creditors provided in sections
17 628.5, [628.15](#), and [628.16](#) shall be extended to ~~thirty-three~~
18 sixteen months in any case in which the mortgagor's period
19 for redemption is extended by this paragraph. This paragraph
20 does not apply to foreclosure of a mortgage if for any reason
21 other than enforcement of a due-on-sale clause. As used in
22 this paragraph, "*due-on-sale clause*" means any type of covenant
23 which gives the mortgagee the right to demand payment of the
24 outstanding balance or a major part thereof upon a transfer by
25 the mortgagor to a third party of an interest of the mortgagor
26 in property covered by the mortgage. This paragraph applies to
27 any foreclosure occurring on or after May 10, 1980. However,
28 this paragraph does not apply if the lender establishes, based
29 on reasonable criteria which are not more restrictive than
30 those used to evaluate new mortgage-loan applications, that the
31 security interest or the likelihood of repayment is impaired as
32 a result of the transfer of interest.

33 Sec. 2. Section 628.3, Code 2018, is amended to read as
34 follows:

35 **628.3 Redemption by debtor.**

1 The debtor may redeem real property at any time within
2 ~~one year~~ six months from the day of sale, and will, in the
3 meantime, be entitled to the possession thereof; and for the
4 first ~~six~~ three months thereafter such right of redemption is
5 exclusive. Any real property redeemed by the debtor shall
6 thereafter be free and clear from any liability for any unpaid
7 portion of the judgment under which said real property was
8 sold.

9 Sec. 3. Section 628.5, Code 2018, is amended to read as
10 follows:

11 **628.5 Redemption by creditors.**

12 If no redemption is made by the debtor as above provided,
13 thereafter, and at any time within ~~nine~~ four months from the
14 day of sale, said redemption may be made by a mortgagee before
15 or after the debt secured by the mortgage falls due, or by any
16 creditor whose claim becomes a lien prior to the expiration of
17 the time allowed for such redemption.

18 Sec. 4. Section 628.15, Code 2018, is amended to read as
19 follows:

20 **628.15 ~~After nine~~ Creditors after four months.**

21 After the expiration of ~~nine~~ four months from the day of
22 sale, the creditors can no longer redeem from each other,
23 except as hereinafter provided.

24 Sec. 5. Section 628.16, Code 2018, is amended to read as
25 follows:

26 **628.16 Who gets property.**

27 Unless the defendant redeems, the purchaser, or the creditor
28 who ~~has last redeemed prior to the expiration of the nine~~
29 within four months aforesaid from the day of sale, will hold
30 the property absolutely.

31 Sec. 6. Section 628.26, Code 2018, is amended to read as
32 follows:

33 **628.26 Agreement to reduce period of redemption.**

34 The mortgagor and the mortgagee of real property consisting
35 of less than ten acres in size may agree and provide in the

1 mortgage instrument that the period of redemption after sale
 2 on foreclosure of said mortgage as set forth in [section 628.3](#)
 3 be reduced to ~~six~~ three months, provided the mortgagee waives
 4 in the foreclosure action any rights to a deficiency judgment
 5 against the mortgagor which might arise out of the foreclosure
 6 proceedings. In such event the debtor will, in the meantime,
 7 be entitled to the possession of said real property; and if
 8 such redemption period is so reduced, for the first ~~three~~
 9 ~~months~~ month after sale such right of redemption shall be
 10 exclusive to the debtor, and the time periods in sections
 11 628.5, [628.15](#), and [628.16](#), shall be reduced to ~~four~~ two months.

12 Sec. 7. Section 654.20, subsection 1, Code 2018, is amended
 13 to read as follows:

14 1. If the mortgaged property is not used for an agricultural
 15 purpose as defined in [section 535.13](#), the plaintiff in an
 16 action to foreclose a real estate mortgage may include in the
 17 petition an election for foreclosure without redemption. The
 18 election is effective only if the first page of the petition
 19 contains the following notice in capital letters of the same
 20 type or print size as the rest of the petition:

21 NOTICE

22 THE PLAINTIFF HAS ELECTED FORECLOSURE WITHOUT REDEMPTION.
 23 THIS MEANS THAT THE SALE OF THE MORTGAGED PROPERTY WILL OCCUR
 24 PROMPTLY AFTER ENTRY OF JUDGMENT UNLESS YOU FILE WITH THE COURT
 25 A WRITTEN DEMAND TO DELAY THE SALE. IF YOU FILE A WRITTEN
 26 DEMAND, THE SALE WILL BE DELAYED UNTIL ~~TWELVE~~ SIX MONTHS
 27 (or ~~SIX~~ THREE MONTHS if the petition includes a waiver of
 28 deficiency judgment) FROM ENTRY OF JUDGMENT IF THE MORTGAGED
 29 PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY
 30 DWELLING OR UNTIL TWO MONTHS FROM ENTRY OF JUDGMENT IF THE
 31 MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS YOUR RESIDENCE
 32 BUT NOT A ONE-FAMILY OR TWO-FAMILY DWELLING. YOU WILL HAVE
 33 NO RIGHT OF REDEMPTION AFTER THE SALE. THE PURCHASER AT THE
 34 SALE WILL BE ENTITLED TO IMMEDIATE POSSESSION OF THE MORTGAGED
 35 PROPERTY. YOU MAY PURCHASE AT THE SALE.

1 Sec. 8. Section 654.21, Code 2018, is amended to read as
2 follows:

3 **654.21 Demand for delay of sale.**

4 At any time prior to entry of judgment, the mortgagor may
5 file a demand for delay of sale. If the demand is filed, the
6 sale shall be held promptly after the expiration of two months
7 from entry of judgment. However, if the demand is filed and
8 the mortgaged property is the residence of the mortgagor and
9 is a one-family or two-family dwelling, the sale shall be held
10 promptly after the expiration of ~~twelve~~ six months, or ~~six~~
11 three months if the petition includes a waiver of deficiency
12 judgment, from entry of judgment. If the demand is filed, the
13 mortgagor and mortgagee subsequently may file a stipulation
14 that the sale may be held promptly after the stipulation is
15 filed and that the mortgagee waives the right to entry of a
16 deficiency judgment. If the stipulation is filed, the sale
17 shall be held promptly after the filing. At any time prior
18 to judgment, the mortgagor may pay the plaintiff the amount
19 claimed in the petition and, if paid, the foreclosure action
20 shall be dismissed. At any time after judgment and before
21 the sale, the mortgagor may pay the plaintiff the amount of
22 the judgment and, if paid, the judgment shall be satisfied of
23 record and the sale shall not be held.

24 EXPLANATION

25 The inclusion of this explanation does not constitute agreement with
26 the explanation's substance by the members of the general assembly.

27 This bill shortens the periods of time associated with
28 redemption of real property from foreclosure in Code chapter
29 628. It changes the period of time that a defendant-debtor may
30 redeem real property from within one year of sale to within
31 six months of sale. It also changes the period in which the
32 defendant-debtor has the exclusive right of redemption from six
33 months after sale to three months after sale. The period of
34 redemption by creditors is reduced from nine months after sale
35 to four months after sale. After those four months, creditors

1 cannot redeem from each other. Unless the defendant-debtor
2 redeems, the purchaser, or the creditor who last redeemed
3 within four months of the day of sale, will hold the property
4 absolutely.

5 Under current law, a mortgagor and mortgagee can agree to
6 reduce the period of redemption from foreclosure as described
7 in the mortgage instrument to a period of six months. The bill
8 would allow the mortgagor and mortgagee to agree to reduce
9 the period of redemption by the debtor to three months. The
10 debtor's right of redemption would be exclusive the first
11 month, as opposed to three months. Under the bill, the time
12 for redemption by creditors would be shortened from four months
13 to two months.

14 The bill also alters Code chapter 654. The bill changes
15 the notice requirement and rule for foreclosure without
16 redemption by changing the length of time a sale can be
17 delayed when a defendant-mortgagor makes a written demand to a
18 plaintiff-mortgagee to delay sale. The bill delays the sale by
19 six months from entry of judgment as opposed to the current 12
20 months. If a plaintiff-mortgagee's petition includes a waiver
21 of deficiency judgment, a defendant-mortgagor's written demand
22 will only result in a three-month rather than a six-month delay
23 of sale following entry of judgment.

24 Notwithstanding Code section 628.3 when a foreclosure of
25 a mortgage on real property results from enforcement of a
26 due-on-sale clause, the bill amends Code section 535.8(4)(e)(1)
27 to shorten the period that a mortgagor may redeem the real
28 property from any time within three years to anytime within
29 18 months from the day of sale under the levy. The bill also
30 shortens the period during which the mortgagor's right of
31 redemption is exclusive from the first 30 months to the first
32 15 months and the period during which creditors may redeem
33 under Code sections 628.5, 628.15, and 628.16 from 33 months
34 to 16 months.